IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL.

Stay Application No. 11122 of 2006
In
Writ Petition No. 1195 (M/S) of 2006

Jaman Singh,
S/o Sri Kishan Singh,
R/o Village – Mathkot,
Patwari Circle Pajyana,
Tehsil – Gairsain,
District – Chamoli. **…….Petitioner**

V e r s u s

1. State of Uttaranchal through Secretary Panchayati Raj, Civil Secretariat, Dehradun.
2. District Magistrate, Chamoli.
3. Sub Divisional Magistrate, Gairsain, District – Chamoli.

…….Respondents

Hon'ble M.M. Ghildiyal, J.

Heard Sri R. P. Nautiyal, learned counsel for the petitioner and learned standing counsel for State of Uttaranchal on behalf of respondents.

By means of this writ petition, the petitioner has prayed for the following reliefs:

(a) issue a writ, order, rule or direction in the nature of Certiorari calling for the records and quashing the impugned order dated 10.08.2006 (Annexure No. 7 to this writ petition) passed by District Magistrate, Chamoli – respondent no. 2.

(b) Pass any other and further order as this Hon'ble Court may deem fit and proper in the circumstances of the case.

(c) award the costs of the writ petition to the petitioner.

By order dated 14.08.2006, District Magistrate, Chamoli, has seized the financial and administrative powers of Gram Pradhan, Mathkot, Vikas Khand Block – Gairsain, District – Chamoli on the basis of report of Sub Divisional Magistrate, Gairsain, on the complaint against the petitioner.

The petitioner has challenged the impugned order on the ground that Rule 3 of U.P. Panchayati Raj (Removal of Pradhan, Up Pradhan and Members) Rules 1997 provides procedure relating to complaint. Under rule 4 it is provided that State Government may, on the receipt of the complaint or report referred to in Rule 3, or otherwise order the Inquiry Officer to conduct preliminary inquiry with a view to find out if there is prima facie case for a formal inquiry in the matter. Sub rule 2 of Rule 4 provides that Inquiry Officer, shall conduct the preliminary inquiry as expeditiously as possible and submit his report to the State Government within fortnight of his having been so ordered.

Under Rule 4 the enquiry is to be conducted by the Inquiry Officer. The Inquiry Officer is defined under clause (c) of Rule 2 of the Uttar Pradesh Panchayat Raj (Removal of Pradhans, Up-pradhans and Members) Enquiry rules, 1997, which reads as under:

"Inquiry Officer, means the District Panchayat Raj Officer or any other district level officer, to be nominated by the District Magistrate"

In the present case, from the perusal of record it is clear that inquiry has been conducted by the Sub Divisional Magistrate, Gairsain, who is neither District Panchayat Raj

Officer nor District Level Officer, as such, he is not competent authority to hold preliminary inquiry as provided under Rules.

Since the order has been passed on the preliminary inquiry report conducted by Sub Divisional Magistrate, is not sustainable in the eyes of law, consequently, impugned order dated 14.08.2006 passed by District Magistrate, Chamoli is quashed. Writ petition is allowed. However, respondents are free to pass fresh order after conducting proper inquiry. Stay application no. 11122 of 2006 is disposed of accordingly.

(M.M. Ghildiyal, J)

August 31, 2006
SKSharma